Office-Supreme Court, U.S.
FILED
JUL 24 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 323

JOHN F. RAMEY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STANLEY M. DIETZ
401 Third Street, N. W.
Washington 1, D. C.
Attorney for Petitioner

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1
Citations to the Opinion below	1
Jurisdictional Statement	2
The Question Presented	2
Constitutional Amendments and Rules Involved	2
Statement of the Case	2
Reasons for Allowing the Writ	3
Conclusion	5

APPENDIX

Decision, U. S. Court of Appeals, June 25, 1964	6
Constitution of the United States, Amendment V	9
Constitution of the United States, Amendment VI	9
Federal Rules of Criminal Procedure, Rule 5	10

TABLE OF CASES

Escobeda vs. Illinois, No. 615 October Term 1963, decided June 22, 1964	4
Lee v. U. S., 322 F2 770, (5th Cir. 1963)	4
Mallorey vs. U. S., 354 US 449; 77 S. Ct., 1360; 1 Led 2, 1479 (1957)	3, 4
Mitchell vs. U. S., 332 US 65; 64 S. Ct. 896; 88 L. Ed. 1140 (1944)	3, 4
Spriggs vs. U. S., No. 17962, U.S. Court of Appeals, D.C., Decided June 19, 1964	4
Wilson vs. U. S., 162 US 613; 16 S. Ct. 895; 40 L. Ed. 1090 (1895)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

JOHN F. RAMEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, John F. Ramey, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on June 25, 1964.

CITATION TO THE OPINION BELOW

On June 25, 1964, the United States Court of Appeals for the District of Columbia Circuit, issued its decision and opinion affirming Petitioner's conviction by the United States District Court for the District of Columbia; the case number in the United States Court of Appeals is 17,774, (A6).

JURISDICTIONAL STATEMENT

The Petitioner was indicted and convicted of three counts of the crime of assault with a dangerous weapon, in the United States District Court for the District of Columbia. The convictions were affirmed on appeal by the United States Court of Appeals for the District of Columbia Circuit. The jurisdiction of this Honorable Court is invoked under 28 U. S. C., Section 1254.

THE QUESTION PRESENTED

The question presented by this petition is:

Was the Petitioner denied a fair trial in violation of his Constitutional rights under the Fifth and Sixth Amendments to the Constitution, by the admission in evidence of an oral statement elicited from the Petitioner during a period of unnecessary delay after arrest and prior to the arraignment, prohibited by Rule 5, of the Federal Rules of Criminal Procedure, and without any warning that the Petitioner had a right to counsel and a right to refuse to answer any question and that his statement would be used against him at the trial of his case?

CONSTITUTIONAL AMENDMENTS AND RULES INVOLVED

The pertinent portions of the Constitution of the United States involved herein are Amendments Five and Six. Rule Five of the Federal Rules of Criminal Procedure is also relevant.

STATEMENT OF THE CASE

On November 24, 1961, Petitioner was involved in a fight against the three complaining witnesses in which melee Petitioner cut each combatant with a pen knife. On November 25, 1961 at about 10:30 P.M. the Metro-

politan Police for the District of Columbia arrested the Petitioner, without an Arrest Warrant, at the Petitioners place of employment and brought the Petitioner to the police station for questioning, (JA1-3). At the police station Petitioner was booked and then taken upstairs for interrogation, (JA 2-4). Prior to being questioned by the police the Petitioner was not warned that he had a right to counsel, that he had a right to refuse to answer any questions, that his statements would be used against him at the trial, (JA 3, 4). The Petitioner was then nineteen years of age with no past criminal record or experience with police methods. It took the police only five minutes to extract a confession from the Petitioner, (JA 4), yet he was not presented to a committing magistrate to be advised of his rights until almost two days later. The United States District Court admitted his oral statements over objection at the trial, (JA 14), and the petitioner was convicted.

REASONS FOR ALLOWING THE WRIT

Petitioner asserts that he did not receive a fair trial in the District Court when his oral statements were admitted into evidence, although obtained during a period of unnecessary delay at the police station before presentation to a magistrate, as part of a process of inquiry that lent itself, even if not so designed, to eliciting damaging statements to support his arrest and ultimately his guilt. This procedure was condemned by this Court in Mallory vs. United States, 354 U.S. 449, 454; 77 S. Ct. 1360; 1 Led 2, 1479; interpreting Rule Five of the Federal Rules of Criminal Procedure. The United States Court of Appeals for the District of Columbia Circuit has released the brakes deterring the overzealous policeman, set in the Mallorey case, ibed, by construing the case of Mitchell vs. U. S., 322 US 65, 64 S. Ct. 896; 88 LED 1140, decided thirteen years prior to the Mallorey vs. U. S., Ibed.,

as an exception to the "Mallorey Rule" and as a means of evading the restraints imposed upon the police by Rule Five. This Court should grant the Writ and forever quiet this debate. This case also presents the problem, which was artfully sidestepped by the United States Court of Appeals, whether or not the right to counsel, as guaranteed by the Sixth Amendment to the Constitution extends to the time of an accused's arrest, making it incumbent upon the arresting officer to notify the prisoner of his rights to counsel, and to refuse to answer questions and that his answers will be used against him at his trial; which would be in agreement with this Courts recent decision in Escobeda vs. Illinois, October Term 1963, No. 615, decided June 22, 1964; as opposed to the decision almost seventy years ago, in the case of Wilson vs. United States, 162 U.S. 613, 623, 16 S. Ct. 895, 900, 40 L. Ed. 1090, 1096. See contra Lee vs. U.S., 322 F2 770, 7, 8, (5th Cir. 1963). The law is not stagnant, it drifts with the flow of the changing times and this Court of necessity must light the course for the Courts below to follow else the administration of justice will be reduced to vascillating guesswork, (JA 5-14). The United States Court of Appeals for the District of Columbia Circuit decided this case, No. 17,774, six days after its decision in No. 17,962, Spriggs vs. U. S., wherein similar questions were presented to a different panel of that Court (one judge sat on both cases), with opposite results being obtained through divergent interpretations of the Mallorey vs. U. S., ibid, rule as emasculated by its predecessor Mitchell vs. U.S., ibid. It is time for this Court to act again to convince the reluctant Courts below that confessions obtained in violation of the accused's Constitutional rights, and by disobeying the Federal Rules of Criminal Procedure, are not to be admitted in evidence.

CONCLUSION

The Petitioner was detained in violation of the provisions of Rule Five of the Federal Rules of Criminal Procedure, denied his right to counsel and to be promptly arraigned before a committing magistrate, as guaranteed by the Sixth Amendment to the Constitution of the United States and denied a fair trial and his liberty without due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States through the admission in evidence, against the Petitioner, of his oral statement, at his trial, and therefore, upon consideration of all the points raised in this petition, Petitioner respectfully urges this Court to issue its Writ of Certiorari and reverse the judgment of the Court below.

STANLEY M. DIETZ
401 Third Street, N. W.
Washington 1, D. C.
Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,774

JOHN F. RAMEY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States District Court
for the District of Columbia

Decided June 25, 1964

Mr. Rodolphe J. A. de Seife, with whom *Messrs. Robert Sheriffs Moss* and *Frank B. Tavenner* were on the brief, for appellant.

Mr. William C. Weitzel, Jr., Assistant United States Attorney, with whom *Messrs. David C. Acheson*, United States Attorney, *Frank Q. Nebeker* and *Barry Sidman*, Assistant United States Attorneys, were on the brief, for appellee.

Before FAHY, BURGER and MCGOWAN, Circuit Judges.

PER CURIAM: This appeal is from a judgment of conviction on three counts of assault with a dangerous weapon (22 D.C. Code § 502). Appellant was charged with having made an unprovoked attack with a knife on three

other young men. He asserted his innocence on the ground of self-defense, but a jury found him guilty. We are asked to reverse because of errors in (1) the admission of evidence and (2) the charging of the jury.

With respect to the former, it is claimed that appellant was prejudiced by the receipt in evidence of certain oral statements made by appellant while in the presence of two police officers shortly after his arrest and before he was taken before a magistrate for a preliminary hearing. These statements were that appellant had wounded the complaining witnesses with the knife but that the attack had been initiated out of fear. However, when asked whether the other young men had threatened him in any way, he is said to have answered "no." The former part of this statement is consistent with, and indeed supports, a claim of self-defense. The latter part, however, would probably be of an injurious character *vis-a-vis* this defense. Thus, these statements appear to us as looking in both directions in respect of the self-defense issue. These oral statements, when offered, were objected to on *Mallory* grounds. After a hearing out of the presence of the jury, they were held admissible by the District Court, in the light of the showing made that they were forthcoming within a few minutes after appellant's arrest and promptly in response to routine inquiries as to what had happened. We do not disturb the District Court's ruling in this regard.[1] *United States* v. *Mitchell*, 322 U.S. 65 (1944).

Appellant urges for the first time on appeal that the statements should not have been admitted because they were not preceded by a warning to appellant that they might be used against him. There is nothing in the rec-

---

[1] We note that a police report embodying in written form substantially the same matters covered by the oral statements was not offered by the prosecution, but was introduced at the instance of defense counsel.

ord, however, which establishes either the presence or the absence of such a warning; and, in the absence of an objection on this ground at the trial, we do not think that reversal is indicated under Rule 52(b), FED. R. CRIM. P.

The other errors asserted relate to the instruction given on self-defense. Appellant did not object to that instruction as such, but at most expressed a preference for an instruction he had submitted. But a party has no right to insist that instructions be always couched in his own language. *Wheeler* v. *United States*, 79 U.S.App.D.C. 363, 147 F.2d 28, *cert. denied*, 333 U.S. 829 (1948). The issue is whether the instruction as given was wrong. We find that it was not here. Appellant also seeks reversal because the self-defense instruction was, at the request of the jury after its deliberations had begun, reread to the jury by itself. There was neither objection or request by appellant in this regard, and there is no occasion to treat this as a reason for reversal. See Rule 52(b), FED. R. CRIM. P.

Affirmed.

CONSTITUTION OF THE UNITED STATES

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

RULE 5. PROCEEDINGS BEFORE THE COMMISSIONER

"(a) Appearance before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

(b) Statement by the Commissioner. The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 323

JOHN F. RAMEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 6–8; R. 28–30)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1964 (R. 31). The petition for a writ of certiorari was filed on July 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "R." designates the joint appendix in the court of appeals and the appeal papers attached thereto, which are on file with the Clerk of this Court. Also being filed with the Clerk are additional portions of the transcript which were before the court of appeals.

743-068—64——1

QUESTION PRESENTED

Whether oral statements made by petitioner at police headquarters shortly after his arrest were properly admitted into evidence.

STATEMENT

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted on a three-count indictment charging assault with a dangerous weapon (a knife) in violation of 22 D.C. Code § 502 (R. 28–29). He was sentenced under the Youth Corrections Act, 18 U.S.C. 5010(b). In a *per curiam* opinion, the court of appeals unanimously affirmed (R. 28–30; Pet. App. 6–8).

The only issue raised by the petition relates to the admissibility into evidence of oral statements made by petitioner to police officers shortly after his arrest. The evidence relating to this matter may be summarized as follows:

At approximately 10:35 p.m. on the evening of November 25, 1961, petitioner was arrested on the assault charge and taken to police headquarters, arriving there at about 10:40 p.m. He was booked at about "10:43 or 10:45" p.m. and turned over by the arresting officer to Detectives Swart and Sayre (R. 1–2). Detective Swart, who was present while petitioner was being booked, testified that after the booking procedures, which lasted about five minutes, petitioner was taken to the "detectives' room" (R. 2–3). At this time, Swart had a five-minute conversation with petitioner. The officer made no promises or threats nor did he employ coercion; petitioner did not hesitate in

answering the detective's inquiries (R. 3–4). Petitioner admitted that he had "cut the three boys at the Capital Park Apartments," and said that he had done so because "he was mad and afraid." He further admitted that the boys had not "threatened him in any way" (R. 4). When shown the knife found on his person, petitioner stated that it was the instrument he had used (*ibid*). Petitioner also made a statement to Detective Sayre, who included the substance of the statement in his police report (R. 5, 15–16). Petitioner told Detective Sayre that the assault had been initiated out of fear, but that none of the young men had threatened him in any way (R. 16–17; 29).

Petitioner's sole objection to the admission into evidence of his oral statements was that they were obtained in violation of the rule of *Mallory* v. *United States*, 354 U.S. 449, in that there was an unnecessary delay from the time petitioner made the statments until his arraignment.[2] The court overruled this objection (R. 5–14).

The typed police report, prepared by Detective Sayre, essentially embodying the same matters contained in petitioner's oral statements, was introduced into evidence by the defense and used in its examination of Detective Sayre.

---

[2] Petitioner was arrested on Saturday evening and was brought before a Commissioner for preliminary hearing the following Monday morning, which was the next session of court (R. 5).

ARGUMENT

Petitioner contends only that statements made by him to the detectives following his arrest were inadmissible under the rule of *Mallory* v. *United States*, 354 U.S. 449. If this argument is based on the claim made at trial that there was an unreasonable delay between the time of petitioner's confession and his arraignment, it is without merit since any delay in arraignment subsequent to the confession does not affect its admissibility. See *United States* v. *Mitchell*, 322 U.S. 65, 69–70; *Bailey* v. *United States*, 328 F. 2d 542, 545–547 (C.A.D.C.), certiorari denied, 377 U.S. 972; *Jackson* v. *United States*, 313 F. 2d 572, 575 (C.A.D.C.). If the claim is that the statements were inadmissible because they were the product of a period of unreasonable delay, it is unsupported by the record. The court below, which has been acutely sensitive to the requirements of the *Mallory* rule,[3] found that there had been no unreasonable delay, and that the statements "were forthcoming within a few minutes after * * * [petitioner's] arrest and promptly in response to routine inquiries as to what had happened" (Pet. App. 7).

Petitioner first argued on appeal that the statements were inadmissible because they were not preceded by warnings to petitioner that any statement he made could be used against him and that he had a right to confer with counsel. The record is silent as to whether petitioner was so informed by the police

[3] See, *e.g.*, *Muschette* v. *United States*, 322 F. 2d 989, reversed on other grounds, June 22, 1964, No. 729 Misc.; *Spriggs* v. *United States*, C.A. No. 17962, decided June 19, 1964.

officers, petitioner's trial counsel never having raised the issue and no evidence having been presented on this matter. When defense counsel has failed in this manner to "ventilate the issue," it is not available as a ground for reversal in an appellate court. See *Hawkins* v. *United States,* 288 F. 2d 122, 125–126 (C.A.D.C.) (Bazelon, J., concurring).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

AUGUST 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964